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7 Attorneys for the Arizona State Board of Pharmacy

8 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**  
9

10 In the Matter of

11 **HOWARD WALDER**

12 Holder of License No. S006112  
As a Pharmacist  
13 In the State of Arizona

Board Case No. 09-0020-PHR

**CONSENT AGREEMENT  
FOR PROBATION WITH CIVIL  
PENALTY AND CONTINUING  
EDUCATION**

14  
15 **RECITALS**

16 In the interest of a prompt and judicious settlement of this case, consistent with the  
17 public interest, statutory requirements and the responsibilities of the Arizona State Board  
18 of Pharmacy ("Board") under A.R.S. § 32-1901, *et. seq.*, Howard Walder  
19 ("Respondent"), holder of Pharmacist License Number S006112 in the State of Arizona,  
20 and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law  
21 and Order ("Consent Agreement") as a final disposition of this matter.

22 1. Respondent has read and understands this Consent Agreement and has had  
23 the opportunity to discuss this Consent Agreement with an attorney, or has waived the  
24 opportunity to discuss this Consent Agreement with an attorney.  
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1           2.     Respondent understands that he has a right to a public administrative  
2 hearing concerning the above-captioned matter, at which hearing he could present  
3 evidence and cross examine witnesses. By entering into this Consent Agreement,  
4 Respondent knowingly and voluntarily relinquishes all right to such an administrative  
5 hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or  
6 any other administrative and/or judicial action, concerning the matters set forth herein.

7           3.     Respondent affirmatively agrees that this Consent Agreement shall be  
8 irrevocable.

9           4.     Respondent understands that this Consent Agreement or any part of the  
10 agreement may be considered in any future disciplinary action by the Board against him.

11          5.     Respondent understands this Consent Agreement deals with Board  
12 Complaint No. 3589 involving allegations of unprofessional conduct against Respondent.  
13 The investigation into these allegations against Respondent shall be concluded upon the  
14 Board's adoption of this Consent Agreement.

15          6.     Respondent understands that this Consent Agreement does not constitute a  
16 dismissal or resolution of any other matters currently pending before the Board, if any,  
17 and does not constitute any waiver, express or implied, of the Board's statutory authority  
18 or jurisdiction regarding any other pending or future investigation, action or proceeding.

19          7.     Respondent also understands that acceptance of this Consent Agreement  
20 does not preclude any other agency, subdivision, or officer of this State from instituting  
21 any other civil or criminal proceedings with respect to the conduct that is the subject of  
22 this Consent Agreement.

23          8.     Respondent acknowledges and agrees that, upon signing this Consent  
24 Agreement and returning this document to the Board's Executive Director, he may not  
25 revoke his acceptance of the Consent Agreement or make any modifications to the  
26

1 document regardless of whether the Consent Agreement has been signed by the  
2 Executive Director. Any modification to this original document is ineffective and void  
3 unless mutually agreed by the parties in writing.

4 9. Respondent understands that the Consent Agreement shall not become  
5 effective unless and until adopted by the Board and signed by its Executive Director.

6 10. If a court of competent jurisdiction rules that any part of this Consent  
7 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement  
8 shall remain in full force and effect.

9 11. Respondent understands and agrees that if the Board does not adopt this  
10 Consent Agreement, he will not assert as a defense that the Board's consideration of this  
11 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

12 12. Respondent understands that this Consent Agreement is a public record that  
13 may be publicly disseminated as a formal action of the Board and may be reported as  
14 required by law to the National Practitioner Data Bank and the Healthcare Integrity and  
15 Protection Data Bank.

16 13. Respondent understands that any violation of this Consent Agreement  
17 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-  
18 1901.01(B)(20), -1927(A)(1).

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1 ACCEPTED AND AGREED BY RESPONDENT

2  
3 Howard Walder  
Howard Walder

Dated: 1-23-09

4 Subscribed and sworn to before me in the County of Maricopa, State of Arizona,  
5 this 23 day of January, 2008, by Howard Walder.

6  
7 Tiffany Poetsch  
NOTARY PUBLIC



My Commission expires: January 09, 2011

10 FINDINGS OF FACT

11 1. The Board is the duly constituted authority for licensing and regulating the  
12 practice of pharmacy in the State of Arizona.

13 2. Respondent is the holder of license number S006112 to practice as a  
14 pharmacist in the State of Arizona.

15 3. During all relevant times to these findings, Respondent worked as a  
16 pharmacist at Sam's Club Pharmacy #6608 (the "Pharmacy") in Phoenix, Arizona.

17 4. Complainant had a prescription for a three-month supply (90 tablets) of  
18 Lovastatin 40 mg filled at the Pharmacy. Complainant received three containers  
19 containing thirty tablets each. One of the containers was Lovastatin 40 mg, but the other  
20 two containers were Lisinopril 40 mg.  
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22 5. Respondent was identified as the filling pharmacist.

23 6. The complainant returned the medication and received the correct  
24 medication. The patient did not take any of the incorrect medication.  
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**CONCLUSIONS OF LAW**

1. The Board possesses jurisdiction over the subject matter and over Respondent pursuant to A.R.S. § 32-1901 *et seq.*

2. The Board may discipline a pharmacist who has engaged in unprofessional conduct. A.R.S. § 32-1927(A)(1).

3. The conduct and circumstances described above constitutes unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(2) (Violating any federal or state law, rule or regulation relating to the manufacture or distribution of drugs and devices or the practice of pharmacy).

4. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1901.01(B)(10) (Violating a federal or state law or administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous drugs, controlled substances or precursor chemicals when determined by the board or by conviction in a federal or state court).

5. The conduct described above violated Arizona Administrative Code R4-23-402(A)(11) (A pharmacist shall make a final accuracy check on the completed prescription medication).

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1 ORDER

2 Based upon the above Findings of Fact and Conclusions of Law, IT IS HEREBY  
3 ORDERED THAT:

4 1. Respondent's pharmacist's license number S006112 is placed on  
5 PROBATION for a six-month period beginning on the effective date of this Order.  
6 During the term of probation Respondent shall:

- 7 a. Pay a civil penalty of \$1,000.00; and  
8 b. Successfully complete and provide proof of successful completion to  
9 the Board of eight (8) contact hours (0.8 C.E.U.) of American  
10 Council on Pharmaceutical Education (ACPE) courses. The courses  
11 shall be pre-approved by Board staff, shall be limited to topics  
12 dealing with prescription error prevention, and shall be in addition to  
13 the requirements of A.R.S. § 32-1936 and A.A.C. R4-23-204.

14 2. Upon payment of the civil penalty required under 1(a) above and  
15 presentation of proof of successful completion of the continuing education required under  
16 1(b) above, Respondent's probation shall terminate.

17  
18 DATED this 17<sup>th</sup> day of MARCH, 2008.

19  
20 ARIZONA STATE BOARD OF PHARMACY

21 (Seal)

22  
23 By: Hal Wand  
24 HAL WAND, R.Ph.  
25 Executive Director  
26

1 ORIGINAL OF THE FORGOING FILED  
this 19 day of March, 2008, with:

2 Arizona State Board of Pharmacy  
3 1700 West Washington, Suite 250  
4 Phoenix, Arizona 85007

5 EXECUTED COPY OF THE FOREGOING MAILED  
BY CERTIFIED MAIL  
this 19 day of March, 2008, to:

6 Howard Walder  
7 22008 N. 36<sup>th</sup> Street  
8 Phoenix, Arizona 85250  
Respondent

9 EXECUTED COPY OF THE FOREGOING MAILED  
this 19 day of March, 2008, to:

10 Elizabeth A. Campbell  
11 Assistant Attorney General  
12 1275 W. Washington Street, CIV/LES  
13 Phoenix, Arizona 85007  
Attorneys for the State of Arizona

14   
#353828